# Mr. S. JOHN'S SPEECH TO THE LORDS IN THE Vpper house of PARLIAMENT *January* 7, 1640.

## CONCERNING Ship-Money.

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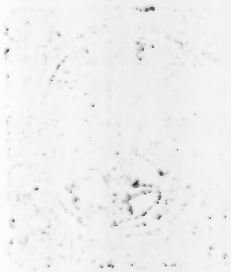

Mr. St-IOHN'S

# ARGVMENTS

CONCERNING

# Ship-money.

MY LORDS,

THe KNIGHTS, Citizens, and Burgeſſes, of the Commons Houſe, have intruſted mee with a meſſage to your Lordſhips, of a generall and very high concernement, ſo generall, that the whole body of the Kingdome, both Peeres and People, are intereſted in it, of ſo high a conſequence, as that there is nothing that can concerne us nearer.

It's one of the *Grandia Regni*, ſo great, as that I ſhall not need to preſent it to your Lordſhips in a multiplying Glaſſe, it will appeare too bigge in its owne dimenſions.

2. Its not that Shipmoney hath beene levyed upon us, but its that right whereby Shipmoney is claymed, which if it be true, is such as that it makes the payment of Shipmoney the gift and earnest penny of all we have.

Its not that our persons have beene imprisoned for payment of Shipmoney, but that our persons & (as it is conceived) our lives too, are upon the same grounds of Law, delivered up to bare will and pleasure.

Its that our birth-right, our Ancestral-right, our condition of continuing Free-subjects, is lost, that of late there hath beene an endeavour to reduce us to the state of villainage, nay to a lower.

Its true, the Lord might taxe his villaine *De haute & de basse*, might take all his lands and goods, the villaine had no property against the Lord, the villaine he could not *Ire quò voluit*, he had no liberty of person, the Lord might imprison him at his pleasure, but the villaines life was his owne, and not his Lords, the Law secured him that. But my Lords, as the Law stands now declared, its disputable, whether it doth so much for us.

My Lords, the subject of this Message is, to present the sence of the Commons to your Lord-ships; That the Lawes of the Realme instituted at first, and freely assented unto, and chosen by their Ancestors for the preservation of themselves and us their descendants, in our persons

perſons, lives and eſtates, have bin of late intruſted unto ſuch hands, as have endeavoured to force upon them a contrary end to that, for which they were ordained, from defenſive to turne them to offenſive, and in ſtead of protecting us, to make the Lawes the inſtrument of taking from us all wee have; Thoſe carriages which have produced this ſence of the Commons, I am commanded at this preſent to declare to your Lordſhips.

They are certaine extrajudiciall opinions delivered by the Judges at ſeverall times, the one in November 1635. The other a yeare after in February 1636.

The Ship-writs that have iſſued to all the Counties of *England*, for theſe many yeares laſt paſt without intermiſſion: The principall thing in theſe writs which I am to preſent to your Lordſhips, is not the charge and burthen which hath beene thereby impoſed upon the ſubjects, though that be great, but the declarations in them of the Law, and of the right whereby this burthen may be impoſed.

The laſt is, that Judgement in Maſter *Hampdens* caſe in the Exchequer upon theſe Shipwrits.

My Lords, the two laſt, that is, the Ship-writ, and the Judgement, becauſe they are very long, I am onely to open them without reading, and to deliver them to your Lordſhips; the other two I am to read them, and then to deliver them to your Lordſhips.

# Ship-money.

*The first opinion in November 1635. was read as followeth.*

I Am of opinion, that as where the benefit doth more particularly redound to the good of the Ports or maritime parts, as in case of Piracie or depredations upon the Seas, there the charge hath beene, and may be lawfully imposed upon them according to presidents of former times, so where the good and safety of the Kingdome in generall is concerned, and the whole Kingdome in danger, (of which his Majestie is the onely Judge) there the charge of the defence ought to be borne by all the Realme in generall: this I hold agreeable both to Law and reason.

My Lords, these opinions were delivered by the Judges severally and apart, they were procured by the solicitation of my Lord *Finch*; The Judges as hee severally procured their hands, were by him enjoyned secrecy accordingly, these opinions walked in the darke for a yeare and upwards: afterwards the procurer of them, my Lord *Finch*, liked them so well, as that he presumed to deliver them to his Majestie. By his procurement, a Letter was directed from his Majestie to the Judges for the delivery of their opinions in these, and some other

other additionals. The former that hath beene read is more modeſt, its onely that his Majeſtie is the ſole Judge of the danger, and that the Iſland as well as the Maritime Townes are chargeable to the defence of the Kingdome.

Its not declared in theſe, that this charge may be impoſed by his Majeſtie alone, for the expreſſion is onely, that the charge may lawfully be impoſed, ſay not by whom.

*In the other opinions they proceed* a malo ad peius and ſpeaks plaine *Engliſh*, *which follow* in hæc verba.

*Charles Rex.* *The Caſe.*

WHen the good, and the Caſe and ſafety of the Kingdome in generall is concerned, and the whole Kingdome in danger, whether may not the King by writ under the Great Seale of *England*, Command all the ſubjects in this Kingdome at their charge, to provide and furniſh ſuch number of Ships with men, victuals, and munition, and for ſuch time as hee ſhall thinke fit for the defence and ſafeguard of the Kingdome, from ſuch danger and perill, and by Law compell the doing thereof in caſe of refuſall or refractorineſſe, and whether in ſuch caſe, is not the King the ſole Judge, both of the danger, and when, and how, the ſame is tobe prevented and avoyded?

C. R.

*Iudges*

## *Iudges Anſwer.*

MAy it pleaſe your moſt excellent Majeſtie, we have according to your Majeſties Command, ſeverally, and every man by himſelfe, and all of us together taken into ſerious conſideration, the Caſe and queſtions ſigned by your Majeſtie, and encloſed in your Royall Letter, and wee are of opinion, that when the good and ſafety of the Kingdome in generall is concerned, and the whole Kingdome is in danger, your Majeſtie may by writ under the great Seale of *England*, command all the ſubjects of this your Kingdome at their charge to provide and furniſh ſuch number of Ships, with men, victuall and munition, and for ſuch time as your Majeſty ſhall think fit, for the defence and ſafeguard of the Kingdom, from ſuch danger and perill: And that by Law your Majeſtie may compell the doing thereof, in caſe of refuſall or refractorineſſe; And wee are alſo of opinion, that in ſuch caſe your Majeſtie is the ſole Judge, both of the danger, and when, and how the ſame is to be prevented and avoyded.

Theſe opinions were ſubſcribed by all the Judges, in Serjeants Inne hall, they were afterwards publiſhed in the Starre-Chamber, that the ſubjects might take notice of them, and

that

that they might never be forgotten, they are enrolled in all the Courts of *Weſtminſter* Hall, in *perpetuam Rei memoriam*: Your Lordſhips will be pleaſed to give me leave to repeat them in their plaine and legall ſence, which I conceive to be thus.

That his Majeſty, as often as himſelfe pleaſeth, may declare that the Kingdome is in danger, That ſo often, for prevention of ſuch danger, His Majeſty by his writ, under the great Seale of *England*, may alter the property of the ſubjects goods, without their conſent in Parlament, and that in ſuch proportions; as his Majeſty ſhall thinke fit, and beſides the altering of the property of their goods, for the prevention of ſuch danger, may deprive them of the liberty of their perſons, and of their lives, and that in ſuch manner as himſelfe ſhall pleaſe.

1. The firſt of theſe (*viz*) that his Majeſty may declare the danger, as often as hee pleaſeth, is made good in theſe words, that the King is the ſole Judge of the danger, and when the ſame is to be prevented and avoyded.

2. The ſecond, that ſo often he may alter the property of the ſubjects goods, without conſent in Parlament, in theſe words; That his Majeſty may, by writ under the Seale of *England*, command and compell all the ſubjects of the Realme, at their charge, to provide and furniſh ſhips.

3. That this may be in what proportion his Majesty shall please in these words, that his Majesty may command them to provide & furnish such number of Ships, with men, victuals, and munition, and for such time as his Majesty shall thinke fit.

4. The last (viz.) that which concernes our persons in these two clauses,

1. That his Majestie in case of refractorinesse may compell the doing of it, this compulsion in case of refractorinesse, includes the person as well as the estate: Nay, it sounds more in the personality then otherwise. For the other, *viz.* whether this personall compulsion may extend so far as to life, I humbly leave it to your Lordships considerations, upon the other Clause; That is, that his Majestie is the sole Judge of such danger, and when, and how the same is to be prevented, whether the words, how it is to be prevented, in this case of personall compulsion, doth not leave the manner of it wholly in his Majesties breast.

My Lords, if these opinions extend onely to Ship-money, it is enough his Majestie takes what he will, and when he will, if all be taken to day, and afterwards by dissent or my owne labour I get a new stocke or lively-hood, that is no more mine then the former, so that there is no property left unto the subject, though the opinions goe no further. But My Lords, Ship-money is not the whole extent of them,

Ship-

Ship-money, by theſe opinions is not due by any peculiarity, in Ship-money: but Ship-money is therefore due, becauſe his Majeſtie is the ſole Judge of the danger of the Kingdome, and when, and how the ſame is to be prevented, becauſe his Majeſtie for the defence of the Kingdome, may at his will and pleaſure charge the people, this is the ground; and upon the ſame reaſon the compulſion may be as well for the making and maintaining of Caſtles, Forts and Bulwarks, making of Bridges, for tranſporting his Armies, for proviſion of wages and victuals, for Souldiers, for horſes and Carriages, it may be multiplyed *in infinitum.*

It may be done when the good and ſafety of the Kingdome is concerned, this extends to all things and at all times, *Qui jacet in terra, non habet unde cadat.*

If theſe opinions be Law, I humbly leave it to your Lordſhips conſiderations, whether the Government be not *Imperium legibus ſolutum*; The next thing I ſhall offer to your Lordſhips is the Ships-writs, a tranſcript of one of them directed to the Sheriffe of Dorſetſhire, I ſhall deliver, all the reſt being of the ſame forme: becauſe that writ is long, I ſhall open it briefely, its to this effect.

There is a declaration in it that *Salus Regni periclitabatur*, that the ſafety of the Kingdome was in danger.

Therefore the Inhabitants of the ſeverall Counties are commanded for the defence of the Kingdome, for the cuſtody of the Seas, for the ſafeguard of the Merchants from Pyracie, inward and outward, that they ſhould provide a ſhip of warre, furniſhed with Gunnes, gunpowder, double Tackle, and all other neceſſaries; and this ſhip thus furniſhed at a day ſet, to be brought to *Portſmouth*, to bee provided for 26 weekes of Marriners wages, victuals and other neceſſaries, and for the doing of this, authority is given to the Sheriffes of the ſeverall Counties, to aſſeſſe every of the Inhabitants *Secundum ſtatum & facultates ſuas*, according to their eſtates and meanes, and further power given him by diſtraining and ſetling of the Diſtreſſe to levy theſe monies *Si contrarios invenerit*, then to impriſon their perſons: and further declares, that all this may be done, *Secundum Legem & conſuetudinem Regni*; The ſence I conceive is briefely thus. That by the Lawes of the Kingdome, when his Majeſtie ſhall declare that the Kingdome is in danger, hee may alter the property of the ſubjects goods, and impriſon their perſons, nay, that not onely his Majeſtie, but the Sheriffes may impriſon their perſons; by the Law the Lord might impriſon his villaine, but could not transferre that power to his Bayliffe or to any other, it was perſonall; That the execution of this power over the perſons of the

ſub-

jects hath gone no further then their imprisonment; whether therein wee be not wholly beholding to his Majesties grace and goodnesse, and nothing at all to the opinions of the Judges, I leave it to your Lordships considerations.

The last thing is, the Judgement in the Exchequer, in the 13. yeare of his now Majesties Raigne, against Master *Hampden*, the Record is very long, I shall briefely open it to your Lordships, *Quarto Augusti. 13. Caroli*, there issued Ship-writs to the severall Counties, amongst the rest to the County of Bucks, the Sheriffe assessed the inhabitants; some of them made default, and did not pay upon a *certiorari* out of the Chancery, directed to the Sheriffe, he certifies the persons that made default, together with the Summons assessed upon them. From the Chancery by *Mittimus*, These Certificates were sent into the Exchequer, to the intent Proces might issue against the defaulters. *A scire facias* issued to the Sheriffe of Bucks, who thereupon amongst other Returnes, that Master *Hampden* hath beene assessed 20 shillings, for some lands in *Stoke-mandevile* in that County, which he had not paid, Master *Hampden* appeared, and upon his appearance demands *OYER* of the Ship-writs, and the other proceedings, after his hearing thereof and understanding the contents, he demurres in Law, that is, demands the judgement and opinion of the

Judges, whether this writ was sufficient in Law, and to force him to pay the said 20 shillings.

This being a great and generall case, the Barons of the Exchequer desired the assistance of the rest of the Judges, who did joyne accordingly. The case came to be argued, there were foure Arguments, two on Master *Hamdens* side, and two on the other side, the first was in Michaelmas Terme, after Alholantide, and all the foure Arguments were speeded before Christmas day, two of them in the Terme, and no longer time would be procured for the rest, but the short vacation betweene Michaelmas Terme and Christmas, it was a Case of so little concernment, that whereas in Westminster Hall, Terme after Terme is usually given to Argue any demurrer, this must be argued betwixt Alhallontide and Christmas, throughout after the Arguments, the Councell on both sides were commanded to bring before the Judges the Records and Authorities cited, they were brought, and for the ease of the Judges, many of them on Master *Hampdens* part were abbreviated on the backsides, those abbreviations were commanded to be expounded; afterwards the Case came to Argument at the Bench, there the case was judged, and by the greater part of the Judges judgement was given against Master *Hampden*; when the Judges had deljvered their Opinions, it was

the

the Barons part to give judgement the judgement was, *Quod ſep̃alia brevia predict. & return. eorundem ac Schedulum predict. eiſdem annex. ac materia in eiſdem content. ſuffecerit in lege exiſtent. ad prefatũ Ioannem Hampden de prædict. viginti ſolidis ſuper ipſum in forma & ex cauſa predict. aſſeſſi onerand. Ideo conſideratum eſt per eoſdem Baron. quod prædictus Iohannes Hampden de eiſdem viginti ſolidis oneratus exinde ſatisfaciat.*

My Lords, this Judgement is a full and plenary execution of the former opinions of the Judges, and of the Ship-writs, for ſo much as it concernes our propriety; It was given in M. *Hamptons* caſe onely; but binds all the ſubjects for ſo binding; it is as that an Honourable perſon, now in my eye, in a caſe depending in the Kings Bench, was denyed any argument or debate, concerning the right of Ship-money, for no other reaſon, but that it had bin by the former Judgement adjudged already in the Chequer.

My Lords, theſe extra-judiciall opinions of the Judges, theſe Ship-writs, and this Judgement, are thoſe carriages, which have introduced this ſence of the Commons, that the fundamentall Lawes of the Realme concerning our property and our perſons are ſhaken.

My Lords, The Commons have taken the extrajudiciall opinions publiſhed and inrolled, and the reſt ſeverally into conſideration,

they

they have been read openly in the house, & after long debate, and long rather in consideration of the greatnes of the matter then of the difficulty of it, they came to vote, foure severall votes passed upon them, the votes passed without so much as one negative voyce to any of them.

The votes were in substance, that they were against the Lawes of the Realm, the right of the property, the liberties of the subject, contrary to the former resolutions in Parliament, and to the petition of right.

The extrajudiciall opinions inrolled, they voted in the whole, and every part of them to be contrary to all these, for they did conceive that in these opinions, there was not any one Clause that was agreeable to the Law, but that throughout they were contrary to the Lawes.

My Lords, the things which the Cõmons took into their cõsideration, before they proceeded to their votes, were the proceedings in the Parliamẽt held 3 *Car.* when the petition of right was framed.

The Cõmons went no higher, the reasons inducing them therto, was, because in that Parliament all those 3 had bin debated, property of goods, liberty of persons, and security of our lives.

Two of them, that is, propriety of goods & liberties of persons, by the occasions of the Cõmissions for the loane, & the Instruction wherwith these Cõmissions were accompanied, that concerning our lives, by occasion of the Cõmissions that had issued, for the executing of Marriall Law.

They

They conceiue that if any thing concerning theſe had paſſed *both Houſes* and his *Majeſtie*, or the *judgement* of *both Houſes* without his *Majeſtie*, it would be in vaine to looke further, that it would be *actum agere*; Nay my Lords they had a farther conſideration, that if thoſe were already ſetled in that *Parliament*, It would not only bee derogatory to the *Iuriſdiction* of *Parliament*, but dangerous to look higher as that they would infer a defect in thoſe Procedings, and caſt an aſpertion upon that *Parliament*; I am commanded now to preſent to your *Lordſhips conſiderations*, thoſe things which ſatiſfie the *Commons*, which are theſe three.

1 The Commiſſions for the *loanes*, with the Inſtructions.

2 A Commiſſion called the Commiſſion of *Exciſe*.

3 An *Addition* of *Saving*, which was deſired by your *Lordſhips* to have been added to the Petition of right, at the time of the framing of it.

The caſe upon the Commiſſion for the *Loane*, ſtandeth thus:

13. *Octobris* 2. *Caroli*, divers Commiſſions were directed to ſundry Commiſſioners, to the number of ſixty or ſeventy Lords and Gentlemen, in the ſeverall Counties iſſued, whereby a compulſary ayde by way of *Loane* was required of the

Subject; the causes and grounds of this Demand are in the Commissions expressed to be these.

The King found the Crowne ingaged in a warre, by advice of *both Houses* in *Parliament*; that not onely the King and the Subject, but also his allyes beyond-Sea, were in danger.

The parts beyond-Sea where our Cloth is vented, and from whence we have most of our provision for Shipping, were indangered; His Majesties Treasures were exhausted, and his coffers empty. A *Parliament* had been summoned, but no supply.

Unavoideable necessitie both at home and abroad, multiplied the enemies: great and mighty preparations, both at Sea and Land, threatned the Kingdome dayly.

Not onely the *Kings* honour, but the safety and very subsistance of the *King* and *People*, and of the true *Religion* abroad, are in apparant danger of suffering irreparably, unlesse not onely a speedy, but also a present stop be made; which cannot admit so long delay as the calling of a *Parliament*: the *People* assured on the Royall Word of a *King*, that not one *penny* should be bestowed, but upon those publique services only, wherein every of them, and the whole body of the Kingdom, their wives, children, and posterity, have their personall and common Interests.

The

The Commissioners dilligence commanded as they tendred the Kings honour, and safety of the *Realme*; Here *salus Regni periclitabatur*, the whole Kingdom was in danger, as in the *Judges* opinions, and as in the Shipwritts and judgement in the Exchequer. Nay my Lords, further; the safety and very subsistance of the *King*, *People*, and true *Religion* were in danger of suffering irreparably, the dangerous instance, not a speedy, but a present stop must be made, the supply could not stay for a *Parliament*; at this time his *Majesties* coffers were exhausted, the King found the Crowne engaged in this war, before the Accesse of it to himselfe, and that by advice in *Parliament*; all this expressed, onely lending of monies for prevention required; but it was a compulsary thing and became compulsary, by the instructions to bind over to the boord, and imprisonment for refusall. These Commissions were in the *Parliament* 3° *Car*. First resolved in the *Commons House* to be against Law: afterwards by your Lordships, and consented unto by his *Majesty*, and are declared to be so in the Petition of right, and the imprisonment of the Subjects for refusall, declared in the Petition of right to be against Law.

*My Lords*,

The next is the Commission called the Commission of *Excise*, this was dated *ultimo*

*Febr.* it was dated after the Summons to that Parliament: This Commiſſion iſſued to 33. Lords, and others of his Majeſties Privy Councell; the Commiſſioners are thereby commanded to raiſe monies by Impoſitions, or otherwiſe; as in their judgements they ſhall finde to be moſt convenient.

The cauſes wherefore theſe moneys are to be raiſed, are expreſſed to be theſe.

The defence and ſafety of the King and people, which without extreameſt hazard of the King, Kingdome, and people; and of the Kings Friends and Allies beyond Seas, cannot admit no longer delay: inevitable neceſſity, wherein forme and circumſtance muſt rather bee diſpenced withall, than the ſubſtance loſt.

The Commiſſioners not to faile therein, as they tendred his Majeſties Honour, and the ſafety of the Kingdome and people.

Here *Salus Regni periclitabatur*, the whole Kingdome declared to be in danger, in greater and nearer, then in the opinions of the Shipwrits or Judgements in the Chequer.

In the Parliament 3° *Caroli* this Commiſſion was adjudged by the *Commons* to bee againſt the Lawes of this Realme, and contrary to the Judgement given in the Petition of right, and after a conference with your Lordſhips, deſired his Majeſty that it might be cancelled: the then Lord-Keeper

ſhortly

ſhortly after brought it cancelled to your Lordſhips in the Houſe, and there ſaid it was cancelled in his Majeſties preſence: you ſent it cancelled to the *Commons* to be viewed, who afterwards ſent it back to your Lordſhips.

*My Lords*, The laſt is the addition of ſaving, deſired to be added to the Petition of right, which was in theſe words.

We humbly preſent this Petition unto your *Majeſtie*, not onely with a care of preſerving our owne Liberties, but with due regard to leave entire the Soveraigne power, wherewith your *Majeſtie* is truſted; for the Protection, Safety, and happineſſe of Your people: Your *Lordſhips* deſire of this Addition to the Petition of right, was taken into conſideration by the *Commons*; and after debate, it was thought fit by them to bee rejected. A conference was had with your *Lordſhips*, and Maſter *Noy* appointed by the *Commons* to declare the reaſons of their reſolution; your *Lordſhips* not receiving ſatisfaction at that conference, whether this Addition ſhould be rejected or not: It was again debated in the *Commons houſe*, they ventured upon the ſame bottome againe; It was thereupon reſolved to be rejected, the reaſons of their rejections were theſe in ſumme

Firſt, they confeſſe that if theſe words were taken as a bare propoſition only, without any further reference to the Petition of right,

right, that it was a true propoſition.

That is, that the Law hath truſted the King with Soveraigne power for the protection, ſafety, and happineſſe of the people.

But if it ſhould be added to the Petition of right, as was deſired; then was it not true, but would make the Petition of right *felo de ſe*, and wholly deſtructive to it ſelfe in all the parts of it; that it would proceed *a bene diviſis, ad mala conjuncta:* for then the petition of right, as they reſolved, would have this ſence.

Whereas in the petition of right, it is ſaid, that no aide, tax, tallage, or other charge whatſoever, may be impoſed upon the people, without their free conſent in *Parliament*; it would have this conſtruction. Its true, it cannot be done by the Kings ordinary power, but it may bee done by that Soveraigne power wherewith the Law hath entruſted his *Majeſty* for the protection, ſafety, and happineſſe of the people.

So likewiſe for impriſonment, that they ought not to bee impriſoned without due proceſſe of Law. It is true ordinarily, that the King may impriſon by his Soveraigne power, wherewith the Law hath entruſted him for the protection, ſafety, and happineſſe of the people.

So that, for that Martiall Law, that the Subjects lives ought not to be taken away, unleſſe by due proceſſe of Law. It's true ordinarily,

dinarily, but the King may doe it by his Soveraigne power, wherewith the Law hath intrusted him for the protection, safety, and happinesse of the people: whereby they conceived that it would not onely make the petition of right to bee wholly distructive of it selfe, but likewise this petition of right would leave the subject in a far worse condition than it found them; for it would necessarily inferre, that which is against the Law: *viz.* that the King by his Soveraigne power, when he pleased to declare that it was for the good of the people, might doe all this.

Your *Lordships* at a conference of both *Houses*, engaged on the part of the *Commons* by Serjant *Glanvile*, and Sir *Henry Martin*, received satisfaction from these reasons; and consented to the leaving out of this Addition; and accordingly, the petition of right passed, and is printed without it.

*My Lords*, these were the things I was commanded to present unto your *Lordships*: other things there were, as the sentence against Bishop *Manwaring*; but these weighed so much with the *Commons*, as that they conceived they needed no more.

*My Lords*, these presidents of that *Parliament*, and these opinions of the *Judges*, the *Shipwrits*, and the *Judgements* in the *Exchequer*; they are like the two Buckets of a Well, if one goe up, the other must goe downe:

downe: *non bene conveniunt.*

*My Lords*, we have not cited these presidents out of diffidence, that your *Lordships* had forgotten them; but because others have; or that wee distrust your Lordships Justice, if you had forgot them: for before these were, your *Lordships* concurred in opinion with your worthy Ancestours, that first gave them. Their Noble bloud runnes in your veynes. It's now to confirme your owne Judgements as well as theirs: In your *Lordships* breasts, there are the same Magazines and Fountaines of Honour and Justice, as was then, these Judgements and proceedings were the Actions of *both houses*, the danger by the violation is equall.

The *Commons* see nothing in the *Judges* opinions or judgement, why they should recede from their former judgements, they hope the same from your *Lordships*.

Besides, *my Lords*, that the case is now much varied from what it was then; not only in the matter, but as it concernes the Honour and Jurisdiction of this great Judicatory, the *Parliament*.

The breach of *Priviledges* in the members is tenderly resented, because that without this freedome, they cannot advise and consult concerning the *Ardua Regni*.

But when they have done all to have their Judgements, and their Acts of *Parliament* overthrowne by the *Judges* afterwards, this makes

makes *Parliaments* to be nothing, this sets up the *Judges* above the *Parliament*, this puts us out of hope of redresse; if they may overthrow the proceedings of that *Parliament* of 3° *Caroli*, they may by the same reason overthrow the Actions of this, and of all future *Parliaments*.

*My Lords*, this was not the practise of their predecessours, though but in private causes; if difficulty of Law arose, they alwayes consulted this Oracle, and thence received their answer how to give Judgement. Judgements in the *Highest Court of Westminster Hall*, I meane in the *Kings Bench*; where the proceedings are (*coram Rege*) are here reversable by Writ of *Error*. In causes of great and generall concernment, they ever adjorned them hither as things too high for them.

*Qui consulta patrum, qui leges juraque servat*, doth well, they have taken that in their hands they had not to doe withall; and how they have handled the matter, your *Lordships* have heard.

The *Judges*, as is declared in the *Parliament*, they have here made themselves the executioners of them; they have endeavoured the destruction of the Fundamentalls of our Lawes and Liberties. *Holland* in the *Low-countries* lyes under the Sea, the superficies of the Land is lower then the superficies of the Sea: Its capitall therefore for

*Role of* 11°. Rich. 2^di^, *are the Executors of the Statutes and of the Judgements & Ordinances of* Parliament, *they have bine made.*

any man to cut the Bankes, becauſe they defend the Countrey.

Beſides our owne, even forraine Authors as *Cominens* obſerves, that the Statute *de Tallagio*, and other old Lawes, are the Sea walls, and bankes, which keepes the Commons from the inundation of the Prerogative.

Theſe Pioners, they have not onely undermined theſe Bankes, but they have levelled them even with the ground.

If one that was known to be *hoſtis Patriæ*, had done this, though the damage be the ſame, yet the guilt is leſſe.

But the *Conſervatores Riparum*, the Overſeers intruſted with the defence of theſe banks, for them to deſtroy them, the breach of truſt aggravates, nay alters the nature of the offence.

Breach of truſt, though in a private perſon, and in the leaſt things, is odious amongſt all men; much more in a publicke perſon, and in things of great and publick concernment, becauſe great truſt binds the party truſted to greateſt care and fidelity.

Its Treaſon in the Conſtable of *Dover Caſtle* to deliver the Keyes, to the knowne enemies of the Kingdome; becauſe that Caſtle is the Key of the Kingdome: whereas if the houſe-keeper of a private perſon, deliver poſſeſſion to his Adverſary; its a crime ſcarce puniſhable by Law.

The *Judges* under his *Majeſty*, are the perſons

ſons truſted with the Lawes; and in them, with the lives, liberties, and eſtates of the whole Kingdome: This truſt of all we have, is primarily in his *Majeſty*; and from him delegated to his *Judges*.

His *Majeſty*, at his Coronation, is bound by his oath to execute Juſtice to his people, according to his Lawes; thereby to aſſure the people of the faithfull performance of this great truſt. His *Majeſty* againe, as he truſts the *Judges* with the performance of this part of the oath: ſo doth he likewiſe exact another oath of them for their due execution of Juſtice to the people according to the Lawes; hereby the *Judges* ſtands intruſted with this part of his *Majeſties* oath.

If therefore the *Judges* ſhall doe wittingly againſt Law, they doe not onely breake their oathes, and therein the common faith and truſt of the whole Kingdome, but do as much as in them lyes, ſmeere and blemiſh the ſacred Perſon of his *Majeſty*; with the odious and hatefull ſinne of perjury.

*My Lords*, the haynouſnes of this offence is moſt legible in the ſevere puniſhments which former ages have inflicted upon thoſe *Judges*, who hath broken any part of their oathes wittingly, though in things not ſo dangerous to the Subject, as in this caſe in queſtion.

Sir *Thomas Wayland* chiefe Juſtice of the

*Common Pleas*, *Ed.* 1. was attainted of Felony for taking bribes, and his lands and goods forfeited; as appeares in the *Pleas of Parliament*, 18° *Ed.* 1. and he was banished the Kingdome as unworthy to live in that State, against which he had so much offended.

Sir *William Thorpe* chiefe Justice of the *Kings Bench*, in *E.* 3ª time, having of five persons received five severall bribes, which in all amounted to 100 pounds; was for this alone adjudged to be hanged, and all his lands and goods forfeited, the reason of this Judgment is entred in the Roll in these words.

*Quia prædict. Willielmus Thorpe, qui sacramentum Domini Regis erga Populum suum habuit, ad custodiendum, fregit malitiosè, falsè, & rebelliter quantum in ipso fuit*; because that hee, as much as in him lay, had broken the Kings oath made unto the people, which the King had intrusted him withall.

There is this notable Declaration in that Judgement; that is, that this Judgement was not to be drawne into example, against any other Officers who should breake their oathes, but onely against those *Qui prædictum sacrum fecerunt, & fregerunt, & habent leges Angliæ ad custodiendum*; that is, onely to the *Judges* oathes, who have the Lawes intrusted to them.

This Judgement was given 24. *Ed.* 3. the

next

next yeare in the *Parliament* 25. *Ed.* 3d. it was debated in *Parliament*, whether this Judgement was legall; *& nullo contradicente*, it was declared to be Juſt, and according to the Law: And that the ſame Judgement may be given in time to come upon the like occaſion. This caſe is in point, that its death for any *Judge* wittingly to break his oath, or any part of it.

This oath of *Thorpe* is entred in the Roll, and is the ſame *verbatim* with the *Judges* oath, in 18. *Ed.* 3. and the ſame which the *Judges* now take.

Your *Lordſhips* will give me leave to obſerve the differences betweene that and the caſe in queſtion.

Firſt, that of *Thorpe* was onely a ſelling of the Law by retayle to thoſe five perſons, for he had onely five ſeverall bribes of thoſe five perſons; the paſſage of the Law to the reſt of the Subjects, for ought appeares, was free and open.

But theſe opinions are a conveyance of the Law by whole ſale, and that not to, but from the Subject.

In that of *Thorpe*, as to thoſe five perſons, it was not an abſolute denyall of Juſtice, it was not a damning up, but a ſtreightning onely of the Channell.

For whereas the *Judge* ought *Judicium reddere*, that is, the Law being the Birth-

right

right and Inheritance of the Subject, the *Judge* when the parties in ſuite demand judgement ſhould *redare*, freely reſtore this right unto them; now he doth not *dare* but *vendere* with the hazard onely of perverting Juſtice; for the party that buyes the judgement may have a good and honeſt cauſe.

But theſe opinions beſides that they have coſt the Subjects very deare, dearer than any; nay I thinke I may truly ſay, then all the unjuſt Judgements that ever yet hath been given.

Witneſſe the many hundred thouſand pounds which under Colour of them have beene levyed upon the Subject, amounting to ſeven hundred thouſand pounds and upwards in money payd unto the Treaſurer of the Navy; beſides what the Subjects have beene forced to pay to Sheriffs, Bayliffs, and others, which altogether as is conceived amounts not to much leſſe than a Million: beſides the infinite vexation of the Subjects by ſuits in Law, binding them over to attendance at the counſell-boord taking of them from their neceſſary imployments in making of Aſceſſes, and collections, and impriſonments of their perſons.

I ſay *my Lords*, beſides what is paſt to make our miſeries compleat, they have

as much as in them lyes made them endleſſe; for by theſe opinions they have put upon themſelves and their ſucceſſors an impoſſibility of ever doing us right againe, and an incapacity upon us of demanding it ſo long as they continue.

*My Lords*, in that ſore Famine in the Land of *Ægypt*, when the Inhabitants were reduced to the next doore to death; for there they ſay, *why ſhould wee dye for bread.* Firſt they gave their money, next their flocks and cattell; and laſt of all, their perſons and their Lands, for bread, and all became *Pharoahs*; but by this *Rex Regia*, there is a tranſe-action made, not onely of our perſons but of our bread likewiſe, wherwith our perſons ſhould be ſuſtained. That was for bread, this is of our bread. For *my Lords*, ſince theſe opinions (if we have any thing at all) we are not at all beholding to the Law for it, but are wholly caſt upon the mercy and goodneſſe of the King.

Againe, there the *Ægyptians* themſelves ſold themſelves and al they had to the King; if ours had been ſo done, if it had been done by our owne free conſent in *Parliament*, we had the leſſe cauſe to complaine; but it was done againſt our wils, and by thoſe who were truſted, and that upon oath; with the preſervation of thoſe things for us.

*My Lords*, the Lawes are our Forts and Bulwarks

Bulwarks of defence, if the Captaine of a Caſtle, onely through feare and cowardiſe, and not from any complience with the enemy, ſurrender it; this is Treaſon as was adjudged in the *Parliament*, 1. *Rich.* 2d. in the two caſes of *Grymes* and *Weſton*, and in the caſe of the Lord *Gray* for ſurrendring of *Barwicke* Caſtle to the *Scots* in *Edw.* 3d. time, though good defence have been made by him, and that he loſt his eldeſt Sonne in maintenance of the Seige; and yet the loſſe of a Caſtle loſeth not a Kingdome onely, but the place and adjacent parts, without trouble to the whole.

But by theſe opinions there is a ſurrender made of all Legall defence of propriety, that which hath been preached is now judged that there is no *meum & tuum* betweene the King and the people, beſides that which concerns our perſons.

*My Lords*, the Law, it is the Temple, the Sanctuary whither the Subject is to runne for ſhelter and refuge: hereby it is become *Templum ſine numine* as was the Temple built by the *Roman Emperour* who after he had built it, put no goods into it.

We have the letter of the Law ſtill, but not the ſence.

Wee have the Fabricke of the Temple ſtill, but the Goddeſſe, the *Dij-Tutelares* are gone.

But

But my Lords this is not all the caſe (that is) that the Law now ceaſeth to aide and defend us in our rights, for then poſſeſſion alone were a good title, if there were no Law to take it away, *occupanti concederetur & melior eſſet poſſidentis conditio.* But this (though too bad) is not the worſt; for beſides that which is privative in theſe opinions, there is ſomewhat poſitive: For now the Law doth not onely not defend us, but the Law it ſelfe is made the inſtrument of taking all away.

For whenſoever his Majeſtie or his Succeſſors ſhal be pleaſed to ſay that the good & ſafety of the Kingdom is concerned, and that the whole Kingdome is in danger: Then when and how the ſame is to be prevented, makes our perſons and all wee have lyable to bare will and pleaſure.

By this means, the Sanctuary is turned into a Shambles, the Forts are not ſlighted, that ſo they might neither doe us good or hurt: But they are held againſt us by thoſe who ought to have held them for us, and the mouth of our own Cannon is turned upon our ſelves.

My Lords, in theſe expreſsions, there is no reflexion upon his Majeſtie. It is onely that theſe Judges would have forced upon the Law an unnaturall and contrary motion, his Majeſties carriage in the buſineſſe cleers his juſtice.

The firſt opinion of the Judges under their hands, was procured by my Lord *Finches* ſollicitation only, & by him brought to his Majeſty

Theſe opinions procured the letter from his Majeſty for the opinions inrolled, wherein, as likewiſe in the Caſe in the Chequer, the Judges were left free, as was acknowledged by two of the Judges in the Chequer Chamber, who argued againſt thoſe opinions, with this proteſtation. That if there were any miſcarriages in that buſineſſe it muſt fall wholy upon themſelves, that the King was blameleſſe.

My Lords wee know his Majeſties juſtice is the faireſt, the richeſt Diamond in his Crowne, the duſt which theſe men would have blowne, and forc'd upon it, its falne ſhort, and with your Lordſhips helping hands, it will we hope, be caſt upon their own faces, a fitter place for it then the other.

My Lords, the oaths of the Judges as they bind them to the due adminiſtration of juſtice to the Subjects according to the Laws, ſo as they be of the Kings Councell, by their oaths, they are bound lawfully to councell him, that is, when their opinions are demanded, they are to deliver them according to the Law.

I ſhall therefore put your Lordſhips in mind of the memorable proceedings againſt theſe Judges who have broken this part of their oath in that notable Parliament, held the eleventh of *Richard* the ſecond.

In this Parliament, judgment of high treaſon was given againſt eighteen ſeveral perſons, and all (ſave one of them) of eminent ranke, three Privy Counſellours, the Archbiſhop of

*Yorke*,

*Yorke*, the Duke of *Ireland*, and Earle of *Suffolke*, the Biſhop of *Exeter*, the Kings Confeſſor, five Knights, ſome whereof had been ſervants to *Edward* the third, and all ſave one, ſervants to the then King, and ſome of them of noble Diſcent, ſix Judges, *Lockton* the Kings Serjeant at Law, *Blake* of the Kings Councell at Law, and *Vske* the under Sheriff of *Middleſex*: of theſe eighteene, eight were executed (that is) Sir *Robert Treſilian* the Chiefe Juſtice, five Knights, *Blake* of the Kings Counſell at Law, and *Vske* the under Sheriffe, three, that is, the Archbiſhop of *Yorke*, Duke of *Ireland*, and Earle of *Suffolk* fled.

The reſt had their lives pardoned, but were baniſhed; their Lands and Goods forfeited, and little penſions allowed them during their lives: It was made felony for any one to procure their pardons, and they to be dealt with all as Traytors, if they returned from their baniſhment: and of thoſe eighteene perſons all ſave three were impeached by the Commons.

The Offences which procured theſe exemplary puniſhments, although their proceedings be long and comprehended all that was done in this Parliament, Ile briefly open them to your Lordſhips. During the Minority of that King by ill Conncell of ſome neere his perſon: there were miſcarriages in government. In the tenth yeare of his Reigne, and the twentieth of his age, a Parliament was holden, in that Parliament in aid of good government, and of due execution of the Laws, a Commiſ-

sion was awarded to 12 severall Peers, and others of greatest wisdom & fidelity, the Cómissioners had power in all things concerning the houshold, Courts of Justice, and the Revenues, in a word in all things concerning the Good of the Realme, with full power finally to determine and put in execution for the Honor of the King, the better governance of the Peace, and Laws of the Realm, & releif of the people.

This Commission was to endure one yeare, at the yeares end the King would be of full age.

My Lords, the endeavouring to overthrow this Commission issued by Authority of Parliament for the welfare of the Realme, upon pretence that it trenched upon the Royall power, tended to the disherison of the King, and derogation of the Crowne, together with the destruction of the Commissioners who procured it, and put the same in execution, upon pretence that they and some others had in Parliament forced the Royall assents.

My Lords, the conspiring to overthrow this Commission, and the procurers of it, is the case in briefe, for although there be divers other Articles against many of them, yet this was the ground-work of all, and this singly and alone is declared in all the proceedings in that Parliament to be Treason, Of these 18 persons condemned, five of them were plotters (*vizt.*) the Archbishop, Duke of Ireland, Earle of Suffolk, *Trisilian* the Chiefe Justice, And Sir *Nicholas Bramber*, these insinuated into the King that this Commission was in dimunition of his

Kingly

Kingly power, that the Procurers of it had extorted his Royall assent, and that this was Treason: thereupon *Blake* one of the Kings Councell at Law was advised withall, who declared his opinion, that it was Treason, he was commanded to prepare an Inditement of Treason against the Commissioners, and some of the Procurers of it, who had bin Active therein.

The Inditement was drawne by him, which is entred in the Role, and is to this effect.

That they had Trayterously conspired amongst themselves in the Parliament, to make this Commission by authority of Parliament against the Regality of the King to his Disherison and Derogation of the Crowne, that they compelled the Kings consent, and that they confederated and bound themselves to maintaine one another in so doing.

It was intended that they should be tried upon this Inditement in Middlesex or in London, *Vske* the Under-Sheriffe of Middlesex was acquainted with the businesse, who was to prepare things for the effecting of this Design, some of the parties to be indited, not being Peeres, which he performing accordingly, was therefore executed.

The five plotters, that the King might the more confide in their Counsells (for so are the words of the Record) & that under the colour of Law they might cover their malice from the King, and the Kingdome, before the triall was to be had, they advise the King to demand the

opinion of ſome of the Judges, that is of the two Chiefe Juſtices, and Chiefe Baron, the Judges of the Common Pleas, ſix in number, and of *Lockton* the Kings Serjeant, *Blake* of the Kings Counſell at Law was commanded to draw up theſe queſtions for the Judges opinions who did it accordingly.

For the drawing up of theſe queſtions, and the Indictment, *Blake* was condemned and executed.

The queſtion being drawne into writing, the Judges were ſent for to *Nottingham* Caſtle, where, in the Kings preſence they were commanded upon their allegiance to deliver their opinions.

1 The firſt queſtion was whether the Commiſſion was in derogation of the Crown, they anſwered that it was.

2 The ſecond queſtion was whether the perſwading and urging the Kings conſent in Parliament thereto was Treaſon, they anſwered, that it was, though there were ſome other queſtions asked, all concerning Parliamentary proceedings, yet theſe were the mayne, and thoſe for which they were condemned, as appeares, by the replication of the Commons to the Judges anſwer, and by the words of the judgment (*viz.*) that they knew that this Commiſſion was awarded in Parliament, that it was for the publike good, that they knew of the trayterous intents to deſtroy the Procurors of this Commiſſion, that they knew the Law,

and

and that it was not Treaſon, and had delivered their opinions thereby under colour of Law, to cover their treaſonable intent, and therefore judgment of treaſon was given againſt them and againſt *Lofton* the Kings Serjeant at Law, who had ſubſcribed the opinions with the Judges.

Sir *Simon Burley*, one of the five Knights that were executed, was condemned only for conſpiring the death of the Procurors of this Commiſſion, and although there be other Articles againſt the reſt, yet this alone is adjudged Treaſon in the ſeverall judgments againſt every one of the eighteen.

1 My Lords, it is obſervable in all theſe judgements, that they are adjudged Traytors, aſwell againſt the perſon of the King as againſt the Common-wealth.

2 Secondy, it is there declared upon great advice taken, that in Treaſons which concern the King and Kingdome, they are not bound to proceed according to the rules of the Common Law and inferiour Courts, but according to the courſe of Parliaments, ſo as maybe for the common good.

3 Thirdly, Judgement was given in Parliament, and execution awarded, and afterwards a Bill of Confirmation paſſed, in reſpect of their Lands, to give them from a day paſt, and for declaration that this ſhould bee no preſident to inferiour Courts to adjudge the ſame Caſes Treaſon, ſave onely in Parliament.

Theſe

Theſe judgements were not hudled up in haſt, but they were given upon long and mature deliberation, theſe judgements were the whole worke of that Parliament, and the proceedings againſt the five plotters were begun the fourteenth of *November*, and the judgments were not given till the thirteenth of *February* following, which was a quarter of a yeer: And is declared in the Roll, that they ſpent a long time, and took great pains to examine the Evidences, the better thereby to ſatisfie their own conſciences and the World.

I inſiſt the more upon this to take away all blemiſh from theſe proceedings.

It is true my Lords, theſe judgments were afterwards in the Parliament of 21. *R.* 2. revoked and made void.

But my Lords, that Parliament of 21. *Ric.* 2. of Revocation was held by force, as it is declared in the Parliament Rols of 1. *Hen.* 4. *Nov.* 21. & 22. that it was held *viris armatis, & ſagittariis immenſis.*

The Knights of Parliament were not elected by the Commons, *pro meos exigit, ſed per regiam voluntatem*: and ſo the Lords, *ſummoniri fecit Rex Dominos ſibi adherentes.*

My Lords by theſe proceedings, it doth appeare, that this Parliament of Revocation was no free Parliament, if at all it deſerve the name of a Parliament, but to put all out of doubt, the Parliament of 1. *Hen.* 4. *No.* 48. theſe judgments of Revocation are declared to be *iniqua*

*iniqua, & omni juri & rationi repugnantia*, erronious, wicked and contrary to all right and reason; and in the Parliament of 1. *Hen.* 4. in print these Attainders are confirmed: so that these judgments of Attainder have the authoritie of two Acts of Parliament both of them of force at this day.

Your Lordships will give mee leave to observe the differences and agreements, between the offences of those, and of the present Judges, and as well in the way and manner of procurement, as in the matter of them: for the manner of procurement, those Judges in *Ric.* 2. time were in the Kings presence, and as it is in the Parliament Roll of 1. *Hen.* 4. *Nov.* 18. they were *violenter attracti*, violently drawn to deliver their opinions, and that *metu mortis & cruciatus corporis*, for the feare of death and tortures of their bodies; and at their trials severally, they say, that in part violence had been offered to their persons; because they had differed in the delivery of their opinions. My Lords, this was such a miscarriage in the Judges, these circumstances considered, as might *cadere in virum fortem & constantem*, but my Lords, feare or cowardize, is no plea for delivering up of the Forts and Bulwarks of the Kingdome.

But in the present businesse, there is none of all this, it came from within, there is no outward force: In those of *Ric.* 2. it was *Actus unicus*, once done at *Nottingham* Castle; if the

Judges had been put to it the ſecond time, perhaps the reſt as well as ſome of them had repented, and would not have done it over again: for *Belknape*, the Chiefe Juſtice of the Common Pleas, the ſame day declared his ſorrow, and ſaid, that now there remayned nothing but a Horſe, a Hurdle, and a Halter; & *Fulthorp* another of them the next day declared his grief, for what he had done. But here after the opinion in *November* 1635, a yeere after, *viz.* 1636, they proceed *a peſſimo ad pejus peſſimo*, for that was with additions, moſt of them declared their opinions in their Circuits, and a yeere after confirmed it againe by the Indictment in the Exchequer, here it was done yeare after yeare in cold bloud: one murderous blow, whereupon death follows, is fellony, but to multiply wounds upon the dead body, and to come again in coole bloud to do it, it ſhews the height of malice. In theſe two things they agree:

1 That which the Judges did in *Richard* the ſeconds time, they did it againſt their own knowledge, they knew the Commiſsion was done by Act of Parliament; ſo here they knew the Petition of Right damn'd the Commiſsions of Loanes, a ſtronger Caſe then that, they ſubſcribed many of them, knew that the Commiſsion of Exciſe was damn'd in Parliament, they knew the other proceedings in Parliaments, and if they had forgotten them, they were afterwards put in minde of them, they needed not to have conſulted with Books and Jour-

Journals of Parliaments, saving only with their own memories.

2 They agree in this, that their opinions tended to the subversion of the Laws and Statutes of the Kingdome, for in that of *Ric.*2. the offence was, the endevouring to overthrow Parliaments, and Parliamentary proceedings, the conspiracie of the death of the procurers was only an aggravation. It was not Treason to conspire the death of a Privy Counsellour, or to kill a Judge, unlesse hee bee upon the Bench, and in that case it is Treason, because of the malice, not of the person, but to the Law; so that there the Treason lay in this, not that they conspired barely against their persons: but with reference to their proceedings in Parliament, and thereby to overthrow the Acts of Parliament, wherein these persons had beene principall Actors. But in this againe they disagree, for in that case there was onely a Conspiracy, no death followed to the Procurers of the Commission, nor was the Commission overthrown, all that was done, was onely this, that a Warrant was directed to the Lord *Maior* of *London*, for apprehending their persons to bring them to triall, which yet was not done. But here (after the opinions delivered) judgment was afterwards given by them in the Exchequer, and execution awarded thereupon; for so much as concernes our property.

And likewise in the Kings Bench, where the judgments after the judgments in the Exche-

quer refuſed to heare any more debate of the matter, and ſo for the liberty of our perſons by keeping divers of the ſubjects in priſon, term after term, for not paying Ship-money, and other things depending upon thoſe opinions, when they had been brought before them upon their *Habeas Corpus*.

4 In that of *Ric.2.* it was for overthrowing but of one Act of Parliament, which was likewiſe introductive of a new Law, for the Commiſsion had no riſe from the Common Law, for in truth it was derogatory to the Crown: It had onely the ſtrength of the Parliament to ſupport it, which was ſufficient, it was for the common good.

But here the endeavour was at once not to blow up one Act of Parliament, but all; and theſe not introductive, but declaratory of the Cõmon Law, as was the Petition of Right, the Statutes there mentioned, & the Reſolutions.

That of *Ric.2.* was but the blowing up of the upper Deck, this of the Common Law, and the Statutes too, and the old foundations and the ſtructures built upon them all together.

In that of *Ric.2.* it was onely to overthrow a Temporary Act of Parliament, that was to continue no longer then one yeare; but this to make an eternall devaſtation (for *toties quoties*) to the Worlds end, as his Majeſty or his Succeſſors ſhall ſay, that the Kingdome is in danger, may theſe opinions bee put in execution, and likewiſe they are enrolled in all the Courts of

of *Weſtminſter* Hall in *perpetuam rei memoriam.*

The ſin againſt the Holy Ghoſt is therefore unpardonable, becauſe it takes from the party repentance, the meanes of pardon; to put us therefore into a Caſe of deſperation, ſome of them have publikely and upon the Bench declared, that this prerogative is ſo inherent in the Crown, as that it cannot be taken away by Act of Parliament.

As they have put an impoſsibility upon themſelves, ſo would they put an impoſsibility upon his Majeſty, your Lordſhips and the whole Parliament, for ever righting us again.

My Lords, *contraria iuxta ſe poſita magis eluceſcunt*, I have preſented your Lordſhips with the obliquity of the ill Judges in *Ric.2.* time, give me leave to preſent your Lordſhips with one example of a contrary nature. And that was in Queen *Elizabeths* time, in the 29 yeare of her Majeſties Reign: She erects a new office in the Common Pleas, for the making of *Superſedeas* on *Exigents* that iſſued there, ſhee grants it to *Richard Cavendiſh*, her ſervant, ſends to have him admitted, but the Judges delay the doing of it for this reaſon, becauſe the Prothonotaries and Phillizers claymed the making of thoſe Writts: The *Queen* ſends a ſharp Letter, and commands them forthwith to admit him, yet the Judges forbeare: the *Queene* ſends a ſharper Letter, commanding them to ſhew the Reaſons of their contempt and diſobedience to the then Lord Keeper, and the

Earle

Earle of *Leiceſter*, no mean men in thoſe days, the Judges deliver their Reaſons why they had refuſed, and it was becauſe others claymed the making of thoſe Writts.

The *Queen* ſends a fourth peremptory meſſage for their admitting him with this Reaſon, that if the others were put out, they were rich and able men, and that her Courts of Juſtice were open where they might demand their Rights.

This was not to take away the right, but to put them to their Action.

The Judges humbly returned this anſwer, that the *Queene* had taken her Oath for the due execution of Juſtice, according to the Law, that they did not doubt, but that when her Majeſty was inform'd, that it was againſt Law, ſhee would doe what befitted her; for their parts they had taken an oath to God, to her and the Common-wealth, and if they ſhould do it without proceſſe of Law, before them, and only upon her command, put the other out of poſſeſsion, though the right remained to them, it were a breach of their Oaths, and therefore if the feare of God were not ſufficient, they told her the puniſhment that was inflicted, upon their predeceſſors for breach of their oaths: (citing theſe of *Thorpe* of *Ric.*2. time) that they might be ſufficient warning to them: the *Queen* hearing of theſe Reaſons was ſatisfied, and the Judges heard no more of the buſineſſe.

*This remayns under the hands of* Anderſon *the Lord Chiefe Iuſtice in a Book of his Reports.*

Theſe Judges have had examples of both kinds

kinds before them, they might have choſen the good and refuſed the bad.

My Lords:

Beſides theſe Judgements and opinions the Commons will in due time bring up theſe Judges with their other Judgements, *Corpora cum cauſis*, for your Lordſhips will eaſily conceive that they who have done this have done more; the principall of them, I meane my Lord Keeper, ſtands accuſed before your Lordſhips of high Treaſon: Hee is not heere, Juſtice goes *pede lento, ſed certo*, it will overtake him at the laſt.

The next ſtep that is making after him, are the Articles of his impeachment, which with your Lordſhips patience are now ready to be opened and delivered to your Lordſhips.

*FINIS.*